



MINISTRY OF JUSTICE AND CORRECTIONAL SERVICES

Republic of South Africa

**Address by the Deputy Minister of Justice and Constitutional Development,
the Hon JH Jeffery, MP,
at the Debate on Vote 22 (The Office of the Chief Justice),
National Assembly,
9 May 2023**

Honourable Chairperson,
Minister Ronald Lamola,
Deputy Minister Patekile Holomisa,
Ministers and Deputy Ministers,
Honourable Members,
Members of the Judiciary,
Officials of the Office of the Chief Justice,

Our courts are fundamental for upholding the rule of law, protecting human rights, and ensuring that justice is served in a fair and impartial manner.

They play a critical role in interpreting and enforcing the provisions of the Constitution.

They are critical to ensuring accountability and transparency in both the government and the private sectors.

They are an essential component of our democracy and play a crucial role in protecting rights and freedoms.

It is for these reasons that we must support and strengthen our courts as much as we can.

Although the support to the Magistrates Courts is still administered by the Department of Justice and Constitutional Development, magistrates are part of the judiciary and should thus, as part of the concept of a single judiciary, form part of this debate.

The Minister of Justice and Correctional Services recently appointed 43 Regional Magistrates for various regional divisions across the country. Their appointment is with effect from the beginning of this month.

I, on the recommendation of the Regional Court Presidents and the Chief Magistrates continue to appoint acting magistrates in vacant offices, or in the place of magistrates on leave or on suspension, to ensure that the courts continue to function effectively. This means that where there is a vacancy in a Magistrates post, the post is filled by an acting appointment.

A fully transformed judiciary is a constitutional imperative. The new appointments of the regional magistrates will further enhance diversity in our courts in terms of both race and gender, with 57% of the appointments being women and 79% being Black. Of the new appointments, 28% are Black males, 14% are White males, 50% are Black females and 7% White females.

The appointments are an important step in capacitating our judicial officers and our courts so as to enable them to deliver justice for all. Our Magistrates Courts are where most people encounter the justice system for the first time. If the Magistrates Courts work well, it builds trust and confidence in the justice system.

In addition to the 43 new Regional Magistrates, the Minister also appointed a Senior Magistrate as a Judicial Quality Assurance Officer in the Ethics Division of the Magistrates' Commission, in addition to the two Senior Magistrates who were transferred to the Ethics and Judicial Quality Assurance Office of the Commission, as well as two Senior Magistrates to serve as judicial educators at the South African Judicial Education Institute (SAJEI).

Two hundred and fifty-nine (259) posts of entry level magistrates and the post of Regional Court President of the North West were advertised recently by the Magistrates Commission with a closing date of 21 April.

SAJEI is crucial to a strong and independent judiciary. In October last year, the SAJEI Council unanimously agreed that a judge should be appointed as Head of SAJEI. Six members of Council were nominated to constitute a Sub-Committee under the leadership of the Deputy Chief Justice to consider all factors relating to the appointment of a Judge as Head of SAJEI and provide a report to Council.

For this purpose the Department of Justice has prepared an Amendment Bill to amend the South African Judicial Education Act so as to make provision for a Judge to head the Institute and to provide for their functions. The draft Bill will soon be considered by SAJEI whereafter it will be formally submitted to the Minister for consideration and submission to Cabinet.

Honourable Members,

Many of our judges and our magistrates are women. As the Minister raised earlier, this year is a significant one and on 25 April the High Courts in both Pretoria and

Johannesburg held ceremonial sittings to commemorate the centenary of the Women Legal Practice Act of 1923. Prior to this Act, the courts had ruled, in *Schlesin v Incorporated Law Society (1909)* and *Incorporated Law Society v Wookey (1912)* that women were not included as 'persons' who could be admitted to legal practice.

The 1923 Act expressly opened the door to women by decreeing that:

'Women shall be entitled to be admitted to practice and to be enrolled as advocates, attorneys, notaries public or conveyancers in any province of the Union subject to the same terms and conditions as apply to men ...'

This led to women becoming legal practitioners. Here we think of the first woman advocate, Irene Geffin, and the first woman attorney, Constance Mary Hall. Desiree Finca became the first Black woman attorney which was in 1967.

As we celebrate and honour these pioneering women, we reflect on the journey of women in the legal profession and we reaffirm our commitment to a bench which is truly representative of the people of our country.

The new Magistrates Bill and the new Lower Courts Bill have been long outstanding, and I have also referred to them in the 2022 OCJ Budget Debate.

The Bills were advertised by the Department for public comment and in December last year we briefed representatives from the Lower Courts Judiciary on the various inputs received on the two Bills.

I had also indicated that there are a number of matters which still require policy decisions to be taken and that we will have further meetings in the course of 2023 with a view to submit the two Bills to Cabinet for approval for them to be introduced into Parliament.

For example, one of the matters that will require a policy decision is the proposal by the magistracy that they be called judges. This will also require input from the Chief Justice as the Head of the Judiciary.

We have since been informed by the Leader of Government Business that given the number of Bills already before Parliament and the fact that we really only have the remainder of this year to finalize Bills, given the upcoming elections in 2024, we have had to re-prioritise the submission of any further Bills.

Given the comprehensive amendments contained in the Bills, it will not be possible to introduce them into Parliament this year, **but it is important to highlight that discussions and consultations will continue** in order to have them ready for introduction after the 2024 elections.

We will soon communicate with the Lower Courts Judiciary on a date to continue with the consultations on the two Bills and will also further consult with the Chief Justice in this regard.

These Bills will, once passed, indeed be the culmination of a significant milestone in the administration of justice in our country.

But, Honourable Members,

We need to ensure that the Department moves more expeditiously in providing the Magistracy with the necessary tools of trade and the necessary equipment so that courts can function optimally.

We are constitutionally bound to improve our efficiency in this regard. Of paramount importance going forward is the rationalisation of the judicial establishment of the lower courts as it will impact not only on vacant posts in which persons are appointed to act, but also on permanent posts of magistrates that will become vacant in the near future.

The Committee on the Rationalisation of the Lower Courts Judicial Establishments is making progress.

The second phase of the rationalisation process, which entails the rationalisation of the judicial establishments of the district and regional courts as well as the geographical areas of the Chief Magistrates' Clusters for the District Courts is underway.

The rationalisation process is a constitutional imperative to promote access to justice and will take into account the rationalised magisterial districts, the current judicial establishments and the factors as stipulated in the Committee's approved Terms of Reference.

The Committee is chaired by Mr Sam Makamu, a Regional Court Magistrate. Adv E Mashile, the former Chief Magistrate of Gauteng; Dr Connie September and Mr Anton Prinsloo, Senior Magistrate for Judicial Ethics, are appointed as additional members to this Committee.

The Committee is expected to submit their report by the end of November this year in terms of the approved Terms of Reference.

Internal processes are at an advanced stage for contracting service providers to conduct the quantitative analysis on the one hand, the qualitative research on the other hand, and the appointment of a researcher to perform tasks relating to amongst others, accessing of information, facilitating information transfers between the Department and the researchers and managing stakeholders.

The Committee's consultations began in March 2023 with the Cluster Heads and Regional Court Presidents who have also supplied written submissions.

The Committee has also met the Regional Courts Presidents Forum last month and will meet the Chief Magistrates Forum next week. Other stakeholders will be consulted as per the Committee's roadmap and action plan.

I also want to mention that have I approached the Deputy Minister of Finance for assistance regarding the development of a separate Financial Manual for Magistrates.

This will assist in further removing the lower courts judiciary from the public service dispensation. Magistrates have now been excluded from the National Travel Policy, which came into effect on 1 September 2022.

A separate travel and subsistence policy has since been implemented for the Magistracy which will be incorporated in the revised Financial Manual. The DOJCD will also have to approach the Accountant-General to submit a request with motivation for a departure from Treasury Instruction No 3 of 2017/18.

The intention of the Manual is to have one core document that will include, amongst others, travel and subsistence, catering, hiring of venues, tools of trade such as cellular phones and mobile data, as well as any other expenditure for the magistrates.

We trust that we will be in a position to submit the Financial Manual for Magistrates to the Director-General and the Minister for approval by the end of September 2023.

Chairperson,

Case flow blockages and roll collapses in our Magistrates Courts remain a matter of serious concern. I therefore want to commend the Regional Court Presidents Forum for convening a meeting, to be held on 20 June, with stakeholders such as the DOJCD, the National Prosecuting Authority, Legal Aid South Africa as well as private legal practitioners, for an in-depth discussion with a view to agree on resolutions on the way forward.

To conclude, Honourable Members,

Our Magistrates Courts and our magistracy are the very foundation of our quest to ensure access to justice for all and putting justice services within reach of everyone, especially the poor and the marginalised.

The public should be able to have confidence in our courts and know that justice will be done, without fear or favour.

I thank you.